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In The

Supreme Court of the United States

October Term, 1956

No. 340

STATE OF OHIO, EX REL EDITH G. CHURCH, RALPH S. BROWN, ALOIS S. KNAPP,

Appellants,

v.

TED W. BROWN, AS SECRETARY OF STATE, STATE OF OHIO,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

JURISDICTIONAL STATEMENT

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OPINION BELOW

The Supreme Court of Ohio delivered a written opinion in the case and made certain conclusions of law in connection with the entry of the decree in question.

The opinion is reported in 165 Ohio St. 31. A copy of the court's opinion and order is set forth in the Appendix.

NATURE OF PROCEEDING AND STATUTE PURSUANT TO WHICH IT IS BROUGHT

The Appellants sought to form a non-profit corporation in the state of Ohio to be known as "National Nudist Council, Inc.," the purpose of which was to further the practice of Nudism in Ohio. To that end, articles of incorporation were drafted and submitted to the Secretary of State for filing and recording. The Secretary of State refused to comply with the request of Appellants relying on the following two sections of the Ohio Code to support his position: (1) Sec. 1702.05 of the Ohio Rev. Code, which says, a non-profit corporation may be formed for any purpose or purposes for which natural persons lawfully may associate themselves, and (2) Sec. 2905.31 of the Ohio Rev. Code, which forbids the practice of Nudism in Ohio.

Sec. 2731.02 of the Ohio Rev. Code says, "The writ of Mandamus may be allowed by the Supreme Court . . ." Pursuant thereto, Appellants did on October 29, 1955, invoke the original jurisdiction of the Supreme Court of Ohio by filing a petition in Mandamus, the prayer of which was that a writ be issued requiring the Secretary of State to accept for filing and recording the articles heretofore mentioned.

To this petition, Appellee filed a demurrer, which after submission of briefs and hearing of oral arguments, was sustained.

DATE OF JUDGMENT, ENTRY NOTICE OF APPEAL

The date of the final decree of the Supreme Court of the State of Ohio, which is now sought to be reviewed, was March 7, 1956, the entry having been made and certified by the Clerk of the Supreme Court of Ohio on March 14, 1956.

Under the provisions of 28 U.S.C. 2101(c), the Appellants had ninety days from March 14, 1956, in which to file their Notice of Appeal. Notice of Appeal was filed with the Clerk of the Supreme Court of Ohio by Appellants on May 18, 1956 and service on opposing counsel was effected on the same date in accordance with Rule 33(1), Revised Rules of the Supreme Court of the United States. Appellants then had 60 days, or until July 17, 1956, in which to docket their case, unless the time for docketing was enlarged under the procedure described in Rule 13(1). On June 29, 1956, at Appellants' request and for cause shown, the Chief Justice of the Supreme Court of Ohio did extend until August 31, 1956, the time in which Appellants could docket their cause in the Supreme Court of the United States.

JURISDICTION

The statutory provision which sustains the jurisdiction of the Supreme Court of the United States is 28 U.S.C. 1257(2), reading to the extent relevant here, as follows:

> "Sec. 1257(2). Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows . . . By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws

of the United States, and the decision is in favor of its validity."

The following cases sustain the jurisdiction of the Supreme Court of the United States:

1. Jurisdiction to entertain an appeal from the decision of a state court on the ground that the state statute violates the "Equal Protection" clause of the 14th Amendment to the Constitution of the United States. Truax x Corrigan, 257 U.S. 312, 331, 42 S.Ct. 124, 66 L. Ed. 254. Norris v Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L. Ed. 1074.

2. Jurisdiction to entertain an appeal from the decision of a state court on the grounds that the state statute violates the First Amendment as coupled with the "due process" clause of the Fourteenth Amendment to the Constitution of the United States. DeJonge v Oregon, 299 U.S. 353, 57 S.Ct. 255, 81 L. Ed. 278. Near v Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L. Ed. 1357.

3. Jurisdiction to review on appeal the question of the validity of the state's use of its police power. Jacobson v Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L. Ed. 643. Liggett Company v Baldridge, 278 U.S. 105, 49 S.Ct. 57, 73 L. Ed. 204.

STATUTE INVOLVED

The statute of the state of Ohio, the validity of which has been sustained by a final decree of the Supreme Court of Ohio as not being violative of or repugnant to the Constitution of the United States, is Sec. 2905.31, Ohio Rev. Code, entitled "Nudism," the text of which is here set out verbatim:

> "No person eighteen years of age or over shall willfully expose his or her private parts in the presence of two or more persons of the opposite sex, or aid or

abet any such act, or procure another so to expose his or her private parts, or as owner, manager, lessee, director, promotor, or agent, or in any other capacity knowingly hire, lease or permit the land, building, or premises of which he is owner or lessor, lessee, or tenant, or over which he has control, to be used for any such purposes.

"Whoever violates this section shall be fined not more than two hundred dollars or imprisoned not more than six months, or both.

"This section does not apply to persons exposing themselves to persons administering bona fide nursing care, nor to such persons exposing themselves to persons licensed under the laws of this state to administer diagnostic, surgical, or therapeutic services or to others rendering any of such services in cases of emergency, nor to the members of a family among themselves, nor to persons bona fide posing for art purposes or exposing themselves for examination or observation in connection with scientific research and study, when such is the sole purpose of such exposure. "As used in this section, 'private parts' means the external genitalia of the human body."

QUESTIONS PRESENTED

Sec. 2905.31 of the Ohio Rev. Code, entitled "Nudism" makes the practice of Nudism a crime per se. That Nudists as a group maintain high and strict moral standards and that Nudist Camps are located in private, secluded spots is immaterial under the statute. Certain groups, in particular artists and models, are excluded from the operation of the statute. Nudism is a large movement in the United States. To its adherents, the practice of Social Nudism offers a real and genuine philosophy of life. To many it is a religion. The Ohio statute here in question pays heed to none of these factors. This situation

gives rise, therefore, to the following questions which are presented by this appeal:

(1) Whether the state statute here in question is violative of the various provisions of the First Amendment to the Constitution of the United States.

(2) Whether the state statute here in question operates in such a fashion as to deny to Appellants the "equal protection" envisioned by the Fourteenth Amendment to the Constitution of the United States.

(3) Whether enactment of Sec. 2905.31 of the Ohio Rev. Code was a valid exercise of the state's police power.

STATEMENT

Nudism is the practice, under proper circumstance, of going without clothes. The practice may be followed in the privacy of the home, among members of the same or opposite sex, or among groups including entire families and representing all ages.

As practiced by its true adherents, Nudism is free from vulgarity, lasciviousness or eroticism. It is rather a social practice aimed at improving mental and physical health by programs making the fullest possible use of sun, light and air.

Nudism has existed in the United States since the 1920's and has millions of adherents in this country, substantial numbers of which are in the state of Ohio. Of the states which comprise the Union, only Ohio and New York have statutes forbidding the practice of Nudism. During 1955, five state legislatures, viz., Arkansas, Kansas, Oklahoma, Michigan and Missouri refused to enact proferred anti-nudist legislation similar to the Ohio statute here in question.

The Appellants herein, all of whom have devoted years of effort toward the furtherance of the Nudist cause, felt they had a fundamental right to practice Nudism in Ohio and to attempt to convert the public to the Nudist cause. In furtherance of these aims and desires, Appellants attempted to form a non-profit corporation, the avowed and stated purpose of which was to promote Nudism in Ohio. To that end, articles of incorporation were drafted and submitted to the Secretary of State of Ohio, the Appellee herein, for filing and recording, which articles were accompanied by the required filing fee. In drafting and submitting the articles in question, Appellants effected strict compliance with all laws and rules governing the process of forming a non-profit corporation in Ohio.

On September 9, 1955, the Appellee acknowledged receipt of the articles of incorporation but refused to accept them for filing and recording. Appellee noted that the purpose of the proposed corporation was to promote and further the practice of Nudism in Ohio. Appellee then pointed out that Sec. 2905.31 of the Ohio Rev. Code made the practice of Nudism illegal in Ohio, and that Sec. 1702.05 of the Ohio Rev. Code provided that non-profit corporations could be formed for legal purposes only, and that, therefore, Appellee was compelled to refuse the request of Appellants.

Art. IV, Sec. 2 of the Ohio Constitution vests original jurisdiction of Mandamus proceedings in the Supreme Court of the State. It is further established in Ohio that the constitutionality of a statute may be raised in a Mandamus proceeding where the right to the issuance of the writ depends on a determination of this question, and the statute affirmatively imposes or excuses the performance of some duty. Kramer v State, ex rel Moore, 45 Ohio App. 389, 187 N. E. 256. Further, in Ohio, Mandamus is

considered an appropriate remedy to compel performance of a given act by the Secretary of State. State ex rel Gongwer v Graves, 90 O. S. 311, 107 N. E. 1018.

The Appellants did thereafter on October 28, 1955, invoke the original jurisdiction of the Supreme Court of Ohio, by filing a petition in Mandamus and on December 13, 1955, an amended petition. The prayer was that a writ of Mandamus issue compelling the Appellee to accept the above-mentioned articles of incorporation for filing and recording.

To Appellant's petition, Appellee filed a demurrer with supporting brief. The essence of Appellee's demurrer was as follows:

(1) Under the statutes of Ohio (Sec. 1702.05 Ohio Rev. Code) articles of incorporation for proposed non-profit corporations could be accepted for filing and recording only for purposes which are legal.

(2) That Sec. 2905.31 of the Ohio Rev. Code made the practice of Nudism a crime in Ohio.

(3) Since the submitted articles had as their purpose the promotion of Nudism in Ohio, that Appellee correctly refused to accept them for recording, and as a necessary corollary, that Appellants had no right to have the writ issued.

To Appellee's demurrer, Appellants filed a reply with supporting brief. The substance of Appellant's position was that the law on which Appellee relied to excuse performance, Sec. 2905.31 of Ohio Rev. Code, was unconstitutional and should be declared invalid by the court. In that connection, the following constitutional arguments were raised:

(1) That Appellants individually and as a group were

entitled to the basic freedoms guaranteed by the First Amendment to the Constitution of the United States, and that Sec. 2905.31 violated these rights.

(2) That Sec. 2905.31 of the Ohio Rev. Code by applying to Nudists, yet excluding other groups, denied Appellants "equal protection" envisioned by the Fourteenth Amendment to the Constitution of the United States.

(3) That the state's exercise of its police power was in this instance invalid. In addition to its being discriminatory, arbitrary and oppressive, particular emphasis was placed on the fact that the statute in question had no real and substantial relation to the purpose for which it was intended, viz., protection of morals.

To support and elaborate on the points raised in their respective briefs, the parties were permitted on oral argument before the Supreme Court of Ohio.

After deliberation, the Supreme Court of Ohio did on March 7, 1956, sustain Appellee's demurrer and denied the writ of Mandamus.

The Court's opinion is reported in 165 Ohio St. 31, and is set forth verbatim in the Appendix.

Pertinent portions of the opinion are quoted herewith:

"Relators contend that the section is unconstitutional being in direct violation of the First and Fourteenth Amendments to the Federal Constitution . . . that Relators have a basic right to assemble as Nudists with others of like belief; that their assemblage being peaceable in nature, the above quoted section is violative of the Federal and State Constitutions and operates in such a manner as to abridge the rights of freedom of

speech, freedom of press and peaceable assembly given by the Constitutions; and that the law is partial in its operation and unduly oppressive . . . The enactment of Sec. 2905.31, Rev. Code, was a valid exercise of the police power.

" 'In determining the constitutionality of the statute, as measured by the police power, we need only to inquire whether this statute is unreasonable, arbitrary and oppressive exercise of the police power, and whether it is really designed to accomplish a purpose falling within the scope of the police power. Every reasonable presumption is indulged in favor of its constitutionality, and if the statute bears any reasonable relation to the public welfare and public morals the court may not declare it to be invalid.' Davis v State, 118 Ohio St., 25, 160 N. E. 473."

THE QUESTION IS SUBSTANTIAL

A

The determination of Federal Constitutional questions was necessary in order to decide the case below.

It was pointed out in the court below that the Appellants herein had sufficient interest in the controversy at hand as to permit them to raise the constitutional question. A resume of the careers of each was included in the record, outlining the years of work and effort which each had contributed to the furtherance of Nudism.

The interest of the Appellants having been established, the Federal Constitutional issues were then presented. It was conceded by Appellants that if Sec. 2905.31 of the Ohio Rev. Code entitled "Nudism" was a valid law, then Appellants had no right to the issuance of the writ of Mandamus, since the statute in question did excuse the Appellee from performing the act requested by Appellants. Appellants contended, however, that the statute in ques-

tion violated the Federal Constitution, then raising the constitutional questions as listed herein. It was necessary for the Supreme Court of Ohio to determine the Federal Constitutional questions in order to have disposed of the case. Reference is made in the court's opinion to the fact that the Federal Constitutional questions were raised and the court did conclude that the state's exercise of its police power in this instance was a valid one.

B

The Federal Constitutional Questions herein presented are substantial.

1. The Appellants respectfully represent that the questions involved in their appeal to the Supreme Court of the United States are of a substantial nature. It is well established that an appeal will not be dismissed for want of a substantial Federal Question, unless the contentions of Appellant are "clearly not debatable and utterly lacking in merit." Hamilton v Regents of University of California, 293 U.S. 245, 258, 55 S.Ct. 197. Chesbro v Los Angeles Flood Control District, 306 U.S. 459, 59 S.Ct. 622.

2. The fact that a question has never been expressly passed on by the Supreme Court of the United States adds to its substantiality. Senn v Tile Layers Protective Union, 301 U.S. 468, 476, 57 S.Ct. 857. It is submitted that the question herein presented, viz., whether the right to practice Nudism is one of the personal liberties protected by the various provisions of the Federal Constitution herein cited, has never been before the Supreme Court of the United States.

3. The Federal questions herein presented are ones which the parties may and do assert on their own behalf and not merely on behalf of others. In the record below,

it was pointed out that each of the Appellants had devoted years of work and effort to furthering the cause of Nudism. Each is a sincere Nudist. The denial to any of the Appellants of the right to practice Nudism vitally affects one of his most fundamental beliefs and correspondingly becomes a very important matter to him. While the Appellants do assert the question on their own behalf, the determination of the issues herein will also be of great importance to numerous persons in Ohio who believe in the practice of Nudism.

4. The most vital point of all the facts here involved is that the Appellants are advocating the cause of Nudism. Advocacy is protected by the First Amendment and any aspect of that advocacy fairly and reasonably devoted to the cause urged is likewise protected. Reilly v Pinkus, 338 U.S. 269, 274, 70 S.Ct. 110. There can be no genuine advocacy of the cause of Nudism without the right to practice it. Advocacy through speaking and writing is limited. In order to sell the public on the merits of Nudism, it is necessary to operate Nudist camps and to provide opportunity for the prospects to actually practice Nudism. Only under such conditions could Appellants and others of like view have a fair chance to convert non-believers. Nudism is a way of life about which there is some difference of opinion. In America, it is a new idea which is struggling for its place in the market of human thought. The exploration of new ideas has added immeasurably to the dynamics of American democracy. The Ohio legislation here in question acts as a barrier to the exploration of an idea. It becomes of the utmost importance, therefore, to determine what constitutional rights are curtailed through its operation.

5. In State v Lerner, 51 O. L. Abs. 321, 81 N. E. 2d 282, the Common Pleas Court of Hamilton County, Ohio

was called on to determine whether "Sunshine and Health," a Nudist magazine, was obscene. At the time of the decision, June 9, 1948, the magazine in question was the official publication of the American Sunbathing Association, Inc., and subsequently it became the publication of the National Nudist Council, which is among the largest and most influential of the Nudist groups in this country. Point No. 11 in the syllabus of the case as carried on p. 322 of 51 O. L. Abs. reads as follows:

> "Photographs of nude persons throughout a magazine of general circulation published for the purpose of advocating Nudism as a philosophy of life do not constitute obscenity."

Sec. 2905.31 of the Ohio Rev. Code, entitled "Nudism" reads to the extent here relevant:

> "No person eighteen years of age or over shall willfully expose his or her private parts in the presence of two or more persons of the opposite sex or aid or abet any such act or procure another so to expose his or her private parts."

Sec. 1.17 of the Ohio Rev. Code provides that any person who aids, abets, or procures another to commit an offense may be prosecuted and punished as if he were the principal offender. Blacks Law Dictionary, 4th ed. on page 91, defines "aid and abet" as follows:

> "Help, assist or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or encourage, counsel or encite as to its commission."

In State v Butler, 11 Ohio Supp. 18, 25 O. O. 567, 38 O. L. A. 211, it was held that any person who aided, advised or procured commission of a misdemeanor, though absent at the time of its commission, could be held as principals.

The law directly above quoted establishes the right to

advocate Nudism through magazine publications in the State of Ohio. On the other hand, the various sections of the Ohio Rev. Code and other matter just above quoted make the practice of Nudism a crime and correspondingly carries punishment for anyone who aids and abets the practice of Nudism or procures others to practice it. Whether Appellants and others of like belief could advocate Nudism through publication is not clear. It is a matter of importance, therefore, that this matter be clarified.

6. The use of its police power in this instance by the State of Ohio borders on thought control. The legislation here in question offers as its justification the protection of public morals. The practice of Nudism is made a crime per se, being thus labelled as an immoral movement against which the public of Ohio must be protected. In the Ohio Rev. Code, Nudism is included in Chapter 2905, which is entitled "Offenses Against Chastity." It is cataloged alongside such repulsive offenses as carnal knowledge, incest, adultery, fornication, pandering and prostitution. The idea presented by the statute is clearly open to challenge. There is an abundance of support from the most respectable lay and legal sources to prove that Nudism is a highly moral movement and that the manner in which it is practiced does not offend the public. The arbitrary classification and labelling which results from this statute gives the public a completely false picture of Nudism. It becomes important to Appellants and other adherents, therefore, to be given opportunity to combat the erroneous impression created by the statute here in dispute.

7. Appellants contend that the basic and fundamental rights guaranteed by the First Amendment to the Constitution of the United States are abrogated by this statute. Clearly, assembling together to practice Nudism is forbidden even though the assemblage be peaceable, secluded

and respectable. Freedom of speech is restricted since true Nudists cannot fully express themselves except in the actual practice of Nudism. With the criminal label showing for all to see, the opportunities to advocate, sell and convert becomes extremely limited either through oral or written mediums. These basic freedoms—assemblage, speech and press— furnish the bulwark of constitutional liberty. The right of the state to abridge these liberties is the exception rather than the rule. Herndon v Lowry, 301 U.S. 242, 57 S.Ct. 732. The broadest possible interpretation is given in determining the scope of these freedoms. Thornhill v Alabama, 310 U.S. 88, 60 S.Ct. 736. The mere fact that these issues are involved adds considerably to the substantiality of the questions presented.

8. Nudism is a way of life which its followers find to be entirely beneficial and salutary. As such, it is in effect just as consonant with religion as any denomination which has a name that identifies those who believe as members of that specific group. In that connection, the Appellants herein do consider Nudism a religion.

9. Appellants herein are made the victims of a discriminatory classification by the operation of the statute. While Nudists are forbidden to practice Nudism, persons who are "bona fide posing for art purposes" are excluded from the operation of the statute. It is submitted that nudity is more important to Nudists than to artists and their bona fide posers. It is further submitted that moral standards among Nudists are at least as high and probably higher than those of artists and posers. Assigning Nudists such a relatively low position on the moral scale is an arbitrary and unjust discrimination which denies to Appellants the "equal protection" envisioned by Sec. 1 of the Fourteenth Amendment to the Constitution of the United States.

10. Practicing Social Nudism requires a group effort. An organization is needed for the pooling of resources with which to establish camps with the proper locations and with adequate facilities. With the passage of time, the corporation has become more and more the popular vehicle for the carrying on of various types of activity involving a number of persons. The principal advantage of incorporating lies in the fact that a member is not liable as such for the obligation of the organization. Members are correspondingly protected against extensive liability. Denying Nudists the right to form a corporation is denying this group the protection afforded to others who are allowed to incorporate.

11. It is conceded that certain segments of the public prefer neither to be seen nor to see others unclad. Out of respect to this view, Nudists exercise great care in conducting their gatherings. Such meetings are held in private, secluded spots well away from the public. But if for any reason, there should be any public display of Nudity, the state of Ohio has a statute to cover the situation. Sec. 2905.30 of the Ohio Revised Code reads to the extent here relevant as follows:

> "No person eighteen years of age or over shall willfully make an indecent exposure of his person in a public place where there are other persons to be offended or annoyed thereby . . ."

This statute is actually a restatement of the Common Law rule on Nudism. At common law, exposure of private parts was an offense, but in order to be punishable the act must have occurred in public or where members of the public might have observed it. Comm v Hamilton, 36 S. W. 2d 342. Appellants and other Nudists have no quarrel with this type of legislation. It is submitted that the statute just above quoted affords sufficient protection against

any form of Nudity which might be offensive to the public. It is further submitted that the statute against Nudism is not needed to protect the public but rather needlessly deprives Nudists of constitutional rights.

CONCLUSION

As it has to the Appellants, Nudism has become an important part of the life of millions of Americans and their families, and has definitely established for itself a place on the American scene. The number is growing rapidly. Its position within the framework of American Constitutional Democracy should be determined. The questions presented by this appeal are substantial and are of public importance. Appellants should be permitted to present the merits of their case in more detail through briefs and oral arguments. It is respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted,

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APPENDIX

State ex rel Church et al v. Brown, 165 Ohio St. 31

HART. J.

The State, ex rel. Church et al., v. Brown, Secy. of State.

(No. 34624—Decided March 7, 1956.)

IN MANDAMUS.
ON DEMURRER to Petition.

The relators have invoked the original jurisdiction of this court for the purpose of obtaining a writ of mandamus to require the respondent Secretary of State to accept for filing and recording articles of incorporation of a proposed nonprofit corporation to be known as "National Nudist Council, Inc."

Relators allege in their amended petition that they "all are adults of legal age and under no disability"; that they have devoted many years of work to the furtherance of the nudist movement in this country, motivated by a desire to serve this cause; that to relators and other sincere adherents nudism is a religion; that all nudist groups maintain strict and high moral standards and seek constantly to improve physical and mental health; that it is relators' desire and they believe their inherent right to practice nudism within the state of Ohio, to conduct a program of general education and information in explanation of the movement, to attempt to convert the public to their point of view and to form nudist clubs; and that relators believe a nonprofit corporation to be the most effective organization for their purposes.

Relators allege further that they have tendered to respondent articles of incorporation for the proposed non-

profit corporation, with the necessary filing fee and with the request that they be accepted for filing and recording, and that respondent refuses to comply with the request.

The prayer is for a writ requiring respondent to accept for filing and recording the articles of incorporation, and that he be required to perform all acts which it is his duty to do in connection with the incorporation of such proposed corporation.

To this petition respondent has filed a demurrer on the ground that the amended petition does not state facts sufficient to constitute a cause of action.

Messrs. Day and Combest, for relators.

Mr. C. William O'Neill, attorney general, *Mr. Ralph Klapp* and *Mrs. Neva H. Wertz,* for respondent.

Per Curiam. Respondent's refusal to accept the articles of incorporation for filing and recording is on the ground that relators are seeking to form a nonprofit corporation to carry on activities which are, at least in part, prohibited by Section 2905.31, Revised Code, namely, the practice of the cult of nudism.

That section provides in part: "No person 18 years of age or over shall willfully expose his or her private parts in the presence of two or more persons of the opposite sex, or aid or abet any such act, or procure another so to expose his or her private part * * *." The section provides further that it shall not be applicable to persons exposing themselves for nursing or medical care or bona fide posing for art purposes.

Relators contend that the section is unconstitutional, being in direct violation of the First and Fourteenth Amendments to the Federal Constitution, and Sections 1, 2, 3 and 11 of Article I of the Ohio Constitution; that re-

lators have a basic right to assemble as nudists with others of a like belief; that, their assemblage being peaceable in nature, the above-quoted section is violative of the federal and state Constitutions and operates in such a manner as to abridge the rights of freedom of speech, freedom of the press, and peaceable assembly given by the Constitutions; and that the law is partial in its operation and unduly oppressive.

The articles of incorporation set forth as the purposes of the proposed corporation:

"A. To further the practice of nudism.

"B. To promote and develop a strong nudist movement composed of member clubs and individual members.

"C. To provide private facilities where members of both sexes may congregate together and in the presence of each other practice nudism without intrusion from or interference by the public.

"D. To develop a program to enlighten the public on the benefits of social nudism.

"E. To foster public health through the teaching and practice of physical and mental hygiene."

The merits of nudism as a doctrine of life need not be considered in deciding this case. The question presented is whether relators may form a nonprofit corporation to carry on activities which are, at least in part, prohibited by statute.

Section 1702.03, Revised Code, appearing in the chapter, "Nonprofit Corporation Law," provides in part: "A corporation may be formed for any purpose or purposes for which natural persons *lawfully* may associate themselves * * *." (Emphasis added.) Clearly, a nonprofit corporation can not be formed for an unlawful purpose.

The formation of a corporation "to provide private facilities where members of both sexes may congregate together and in the presence of each other practice nudism," as stated in the proposed articles of incorporation, clearly would be violative of Section 2905.31, Revised Code, which prohibits the practice of nudism, regardless of the belief of those desiring to practice it as a doctrine of life, cult or sect.

The enactment of Section 2905.31, Revised Code, was a valid exercise of the police power.

"In determining the constitutionality of the statute, as measured by the police power, we need only to inquire whether this statute is an unreasonable, arbitrary, and oppressive exercise of the police power, and whether it is really designed to accomplish a purpose falling within the scope of the police power. Every reasonable presumption is indulged in favor of its constitutionality, and if the statute bears any reasonable relation to the public welfare and public morals the courts may not declare it to be invalid." *Davis* v. *State*, 118 Ohio St., 25, 160 N.E., 473.

The relators not having shown by their petition a clear legal right to the relief prayed for, the demurrer to the petition is sustained and, relators not desiring to plead further, a writ of mandamus is denied.

Demurrer sustained and writ denied.

WEYGANDT, C.J., MATTHIAS, HART, ZIMMERMAN, STEWART, BELL and TAFT, J.J., concur.